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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

CENTRAL SECRETARIAT

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 25th August, 1972:—

BILL No. XII OF 1972

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Constitution (Amendment) Act, 1972. Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 174 of the Constitution, after clause (*2*), the following new clause shall be inserted, namely:— Amendment of article 174.

"(3) Nothing in clause (*2*) shall empower or entitle the Governor to dissolve the Legislative Assembly without summoning it and ascertaining the confidence of the Assembly in the Chief Minister."

STATEMENT OF OBJECTS AND REASONS

Under article 154 of the Constitution, which is contained in the Chapter headed "The Executive" in Part VI, the executive power of a State is vested in the Governor. Article 163 in the same Chapter provides that the Council of Ministers is to aid and advise the Government in the exercise of his functions, namely, the executive functions. But article 163 does not envisage that in matters relating to Legislature (which is dealt with in a different Chapter) the Governor is to be aided or advised by his Council of Ministers. The State Legislature is entirely different from the State Executive.

Although State Ministers constitutionally hold their office at the pleasure of the Governor, this pleasure cannot be exercised in an arbitrary or whimsical fashion but can only be properly exercised in relation to the Ministry's position *vis-a-vis* the Legislature. Only when the Ministry has lost the confidence of the Legislature, is the Governor entitled to dismiss a recalcitrant Chief Minister. It is the duty of the Governor to uphold the Constitution and to see whether the Chief Minister enjoys the confidence of the Assembly or not before dissolving it. Thus it is necessary to amend article 174 of the Constitution so as to make a clear provision to meet such situations.

Hence this Bill.

OM PRAKASH TYAGI.

Bill No. XXII of 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Amendment) Act, 1972.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 217

2. In article 217 of the Constitution, in clause (*1*),—

(*a*) for the words "the Chief Justice of the High Court" the words "the Chief Justice and all the permanent Judges of the High Court" shall be substituted;

(*b*) the following Explanation shall be inserted at the end, namely:—

"*Explanation.*—For the purposes of this clause the consultation of 'the Chief Justice and all the permanent Judges of the High Court' means their unanimous opinion and in the case of difference, the majority opinion."

STATEMENT OF OBJECTS AND REASONS

The practice prevailing at present is that only the Chief Justice of the High Court forwards the name of the person who is to be appointed as a Judge of the same High Court. This existing practice and the provision contained in article 217 cannot be considered as satisfactory as it does not afford opportunity for obtaining the views of the other Judges of the High Court. There is no justification for considering only the opinion of the Chief Justice and in ignoring the opinion of the other Judges. It would be in fitness of things if the opinion of all the permanent Judges of the High Court is obtained and recommendation by the Chief Justice of the High Court is done in accordance with the same. This would reduce the chances of overlooking objective considerations and would go a long way in forwarding the names of persons, who deserve such appointments purely on the basis of merit and calibre. Even the Law Commission in its report has testified that the existing provision for the appointment of High Court Judges is not satisfactory. With this object in view, the proposed amendment is necessary for ensuring that deserving persons are considered for high judicial appointments.

Hence the Bill.

OM PRAKASH TYAGI.

B. N. BANERJEE,
Secretary.

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